



**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

March 18, 2004

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND FACSIMILE**

Hi-Tech Funding, Inc.
a.k.a. Hi-Tech Funding
21777 Ventura Boulevard, Suite 235
Woodland Hills, California 91364
Attn: Maurice Leveille, President
Steve Hren, Vice President
Alan Joffe, Secretary

Hi-Tech Funding, Inc.
a.k.a. Hi-Tech Funding
5241 Leghorn Avenue
Sherman Oaks, California 91401
Attn: Maurice Leveille, President
Steve Hren, Vice President
Alan Joffe, Secretary

RE: EB-04-TC-046

Dear Correspondents:

This is an official **CITATION**, issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 503(b)(5), for violations of the Act and the Federal Communications Commission's rules that govern telephone solicitations and unsolicited advertisements.¹ As explained below, future violations of the Act or Commission's rules in this regard may subject your company to monetary forfeitures.

It has come to our attention that your company has delivered one or more prerecorded messages to a residential telephone line or lines in violation of the section 227(b)(1)(B) of the Act and section 64.1200(a)(2) of the Commission's rules. Under the rules, it is unlawful to

Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call,

¹ 47 U.S.C. § 227; 47 C.F.R. § 64.1200. A copy of these provisions is enclosed for your convenience. Section 227 was added to the Communications Act by the Telephone Consumer Protection Act of 1991 and is most commonly known as the TCPA. The TCPA and the Commission's parallel rules restrict a variety of practices that are associated with telephone solicitation and use of the telephone network to deliver unsolicited advertisements, including prerecorded messages to residential telephone lines.

- (i) Is made for emergency purposes,²
- (ii) Is not made for a commercial purpose,
- (iii) Is made for a commercial purpose but does not include or introduce an unsolicited advertisement³ or constitute a telephone solicitation,⁴
- (iv) Is made to any person with whom the caller has an established business relationship⁵ at the time the call is made, or
- (v) Is made by or on behalf of a tax-exempt nonprofit organization.

Accordingly, the rules generally prohibit delivery of prerecorded advertisements and solicitations to residential telephone lines unless the call is made (1) by or on behalf of a tax-exempt nonprofit organization, (2) with the prior express consent of the called party, (3) to a person who has an established business relationship with the caller.

² The term “emergency purposes” means calls made necessary in any situation affecting the health and safety of consumers.” 47 C.F.R. § 64.1200(f)(2).

³ The term “unsolicited advertisement” means “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission.” 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(10).

⁴ The term “telephone solicitation” means

the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

- (i) To any person with that person's prior express invitation or permission;
- (ii) To any person with whom the caller has an established business relationship; or
- (iii) By or on behalf of a tax-exempt nonprofit organization.

47 U.S.C. § 227(a)(3); 47 C.F.R. § 64.1200(f)(9).

⁵ The term “established business relationship” means

a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

(i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3) of this section, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

(ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

47 C.F.R. § 64.1200(f)(3)

The attached information indicates that your company delivered an unsolicited advertisement or telephone solicitation, through a prerecorded message, to one or more residential telephone subscribers who either (1) had not expressly invited or authorized the call(s) or (2) did not have an established business relationship with your company (a transaction within 18 months prior to the call(s), or an inquiry or application within 3 months prior to the call(s)). As explained above, this action violates section 64.1200(a)(2) of the Commission's rules.

If, after receipt of this citation, you violate the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation.⁶

You may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. Your response should specify the actions that you are taking to ensure that you do not violate the Commission's rules governing telephone solicitation and unsolicited advertisements, as described above.

The nearest Commission field office appears to be the Los Angeles Office at Cerritos Corporate Towers, 18000 Studebaker Road, Room 600, Cerritos, California 90703-2692. Please contact Senetta Lancaster at (202) 418-7320 if you wish to schedule a personal interview. You should schedule any interview to take place within 30 days of the date of this letter. You should send any written statement within 30 days of the date of this letter to:

Kurt A. Schroeder
Deputy Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission
445-12th Street, S.W.
Rm. 3-C366
Washington, D.C. 20554

Reference EB-04-TC-046 when corresponding with the Commission.

Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least 5 days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

⁶ See 47 C.F.R. § 1.80(b)(3).

For accessible format materials (braille, large print, electronic files, and audio format): 202-418-0531 (voice), 202-418-7365 (tty).

Under the Privacy Act of 1974, 5 U.S.C. § 552(a)(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

The knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Thank you in advance for your anticipated cooperation.

Sincerely,

Kurt A. Schroeder
Deputy Chief, Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission

Enclosures